

REMARKS

Reconsideration and allowance of the above-identified application are respectfully requested. Claims 1-33 remain pending, wherein claim 30 is amended.

Applicants note with appreciation the Examiner's indication in paragraph 9 of the Office Action that claims 16, 17, 19 and 27 contain allowable subject matter.

In paragraph 2 of the Office Action claims 30-33 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, the Office Action states that the recitation of a "machine readable medium" is not one of the statutory classes of invention. Although Applicants respectfully disagree, claim 30 has been amended in the manner suggested by the Examiner in order to expedite prosecution of the application.

In paragraph 4 of the Office Action claims 1, 7-10, 18 and 30 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,194,535 to Hannel et al. ("Hannel"). This ground of rejection is respectfully traversed.

Hannel does not anticipate claim 1 because Hannel does not disclose a method that involves a determination of "whether to employ stateless routing of

the incoming data based on a destination host associated with the incoming data.”

Hannel discloses a technique for testing stateful network communication devices by establishing stateless and stateful connections with a device under test. As illustrated in Figure 4, data is requested on the stateless and stateful connections, and based on the measured performance of the stateful connection, the behavior of stateless connections are modified. Hannel, however, does not disclose that a determination of whether stateless routing is employed *based on a destination host associated with the incoming data*.

The rejection of claim 1 cites column 8, lines 22-45 of Hannel as disclosing the determination recited in that claim. This section describes the method of Figure 5A in which stateless packet processor 110 determines that a response to a received packet is required, swaps the source and destination addresses of the received packet and sends this packet to the device under test. Accordingly, in this method of Hannel the determination of whether to send a stateless packet is based on *whether a response is required*, and not based on a *destination host associated with incoming data* as recited in claim 1.

Because Hannel does not disclose all of the elements of claim 1, Hannel cannot anticipate this claim. Claims 7-10 and 18 are patentably distinguishable

over Hannel at least by virtue of their dependency from claim 1. Claim 30 recites similar elements to those discussed above with regard to claim 1, and is patentably distinguishable over Hannel for similar reasons.

For at least those reasons stated above, it is respectfully requested that the rejection of claims 1, 7-10, 18 and 30 as being anticipated by Hannel be withdrawn.

In paragraph 7 of the Office Action claims 2, 3, 5, 6, 11-13, 20-23, 25, 28-33 are rejected under 35 U.S.C. § 103(a) as being obvious in view of the combination of Hannel and U.S. Patent Application Publication No. 2001/0030961 to Gazsi et al. ("Gazsi").

Although the header of this rejection indicates that claim 30 is being rejected in view of the combination of Hannel and Gazsi, it is believed that this is a typographical error because the Office Action rejects claim 30 for anticipation by Hannel, which requires Hannel to disclose every element of that claim.

Claims 2, 3, 5, 6, 11-13, 20-22 and 31-33 variously depend from claims 1 or 30. Gazsi is cited for the elements recited in these dependent claims, but does not remedy the above-identified deficiencies of Hannel with respect to claims 1 and 30.

The combination of Hannel and Gazsi does not render independent claim 23 obvious because the combination does not disclose or suggest "determining whether to employ stateless routing of the message based on the historical data and the control data." The combination also does not disclose or suggest "sending the message to the one or more destination hosts over additional connections forming one or more virtual circuits."

The Office Action does not specifically address the determination of whether to employ stateless routing recited in claim 23. However, there is nothing in Hannel or Gazsi disclosing or suggesting that such a determination is based on historical data or control data.

The Office Action also does not specifically address the sending of the message recited in claim 23. However, Hannel and Gazsi are both silent regarding the use of virtual circuits, and accordingly the combination cannot disclose or suggest sending the message "over additional connections forming one or more virtual circuits."

Because the combination of Hannel and Gazsi does not disclose or suggest all of the elements of claim 23, the combination cannot render this claim obvious. Claims 25, 28 and 29 are patentably distinguishable at least by virtue of their dependency from claim 23.

For at least those reasons stated above, it is respectfully requested that the rejection of claims 2, 3, 5, 6, 11-13, 20-23, 25, 28-33 for obviousness in view of the combination of Hannel and Gazsi be withdrawn.

In paragraph 8 of the Office Action 4, 14, 15, 24, 26 and 33 are rejected under 35 U.S.C. § 103(a) as being obvious in view of Hannel, Gazsi and U.S. Patent Application Publication No. 2003/0074413 to Nielsen et al. ("Nielsen").

Claims 4, 14, 15, 24, 26 and 33 variously depend from claims 1, 23 or 30. Nielsen is cited for the elements recited in these dependent claims, but does not remedy the above-identified deficiencies of the combination of Hannel and Gazsi with respect to claims 1, 23 or 30. Accordingly, withdrawal of this ground of rejection is respectfully requested.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #101610.55983US).

Respectfully submitted,

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